RECENT CASE NOTES

ADMIRALTY—PRIZE COURT PROCEEDINGS—PROPERTY SUBJECT TO CONDEMNATION.—A German firm chartered a Russian sailing ship, on May 6, 1914, to carry a cargo of nitrate from Chile to Europe, loading not to begin before July 13, 1914. On that day, the Hamburg firm sold the cargo to the appellant, a Dutch corporation, by a contract according to which the invoice price was to be payable "90 days after receipt of first bill of lading," or if the ship arrived earlier, then "against acceptance of the documents." The appellant was to name the port of arrival, and the cargo, after loading, was to be at its risk. On August 6, the loading was completed, and the appellant was notified. The German firm through their Chilean branch took the 3 bills of lading, with the cargo deliverable to their order. On September 9 they deposited the first bill of lading with their bank in Amsterdam, with instructions not to turn over to the appellant the bills of lading until the invoice was paid. On October 19, the German firm sent the appellant an invoice for the price, with a statement that the amount was due December 9. The cargo was seized as prize at Plymouth, December 6, but the appellant, unaware of the seizure, had written to the German firm's bankers at Amsterdam, who then held two of the bills of lading, enclosing the invoice price with instructions not to pay over the money until they received the third bill of lading. This was received on January 25, 1915, whereupon the bankers paid the German firm, and handed all the bills of lading to the appellant. From the decision of Sir Samuel Evans, President of the Prize Court, holding that the property had not passed to the Dutch buyer, but remained in the German sellers and was subject to condemnation, an appeal was taken to the Privy Council. *Held,* that the cargo was not subject to condemnation, property having passed to the Dutch buyer when the loading was completed. *The Parchim* (1917, P. C.) 117 L. T. 738.

The enemy character of goods seized as prize is determined by property, not by risk. *The Miramichi* [1915] P. 71; *The Odessa* [1916] A. C. 145. Intermediate lienors may carry all the risk of loss, yet may not have property. Still, risk raises an important inference as to property, and a *prima facie* inference as between seller and buyer directly: *Res perit domino. Martineau v. Kitching* (1872) L. R. 7 Q. B. 436, 453. In the instant case, interpreting the contract and the intention of the parties, Lord Parker concluded that from the moment the cargo was loaded and the Dutch buyer notified thereof, a duty to pay arose, all risk of loss fell on the buyer, and the property passed to it. The buyer merely had a credit of ninety days from the time of arrival of the first bill of lading in Europe for the actual payment of the purchase price. The sellers did not retain any *jus disponendi,* as Sir Samuel Evans concluded; but as security for the purchase price the sellers, through their bankers, were to retain control of the bills of lading, the evidence of title, which were not to be turned over to the buyer until the purchase price was paid. See *Mirabita v. Imperial Ottoman Bank* (1878) L. R. 3 Ex. D. 164; *Browne v. Hare* (1858, Ex.) 3 H. & N. 484. The Privy Council appears to have correctly construed the contract as to the time when property was to pass.

CARRIERS—ACTION BY NOMINAL CARRIER AGAINST CARRIER IN POSSESSION—LIABILITY OVER AS BASIS OF RECOVERY.—The plaintiff held himself out as a carrier of freight by boat and received goods for transportation, chartering for the purpose of carrying the goods the cargo space in a vessel owned and operated by the defendant. Because of the unseaworthiness of the ship, the